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No. 86-1939

In The

Supreme Court of the United States

October Term, 1986

ZELMA E. HAYES,

Petitioner,

v.

JOYCE M. DIXON, *et al.*,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE NORTH CAROLINA COURT OF APPEALS

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether the state of North Carolina may rely on this Court's decision in *Lalli v. Lalli*, 439 U.S. 259 (1979), and require either a formal determination or a formal admission of paternity during the father's lifetime as a precondition for distribution to an illegitimate under its intestate succession statute?

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Respondents Joyce M. Dixon, administratrix of the Estate of Kyrl Houston Jeffries, Novella J. Martin, Samuel Jeffries, and Joyce M. Dixon, administratix of the Estate of Myrtle Jeffries, respectfully request that this Court deny the petition for writ of certiorari seeking to review the judgment and opinion of the North Carolina Court of Appeals.

STATEMENT OF THE CASE

The respondents accept the petitioner's statement of the procedural history of the case. In brief, this case

arises from summary judgment entered against the petitioner, Zelma E. Hayes, in her action seeking to be declared sole heir, as only child, of Kryl Houston Jeffries. Summary judgment was granted on the basis of petitioner's failure to meet the statutory requirements for illegitimates to inherit under the North Carolina intestate succession statute, N.C.G.S. 29-19. The North Carolina Court of Appeals affirmed and the North Carolina Supreme Court dismissed an appeal and denied a petition for discretionary review. Petitioner has now come before this Court seeking to have *Lalli v. Lalli,* 439 U.S. 259 (1979), overruled and thereby to invalidate the North Carolina statute.

The petitioner, Zelma E. Hayes, now fifty-five years old, was born March 19, 1932 in Alamance County, North Carolina. The petitioner's birth certificate identifies Eliza Ann Jeffries as the child's mother and Kryl Jeffries as the child's father. Eliza Ann Jeffries and Kryl Jeffries were never married.

While the respondents admitted on information and belief that petitioner was the illegitimate child of Kryl Jeffries (R. 29) the decedent conducted himself in an ambiguous manner in his relations with the petitioner. Eliza Ann Jeffries died three days after giving birth to the petitioner. The petitioner grew up in Alamance County, reared by a maternal aunt. Kryl Jeffries, the decedent, stated that he did not know that Eliza Ann Jeffries was pregnant until after she had died and further stated that it was the petitioner's aunt who alleged that he was the father. (R. 111) The aunt however never initiated any support proceedings. The record indicates that the peti-

tioner did not establish regular contact with the decedent until 1975. (R. 114) The petitioner maintained sporadic contact with the decedent after that date until his death. While the decedent on occasion referred to petitioner as his daughter (R. 28) he did not acknowledge this fact to his friends (R. 110-116) and on occasion expressed doubt that he was petitioner's father. On one occasion he showed some photographs of the petitioner's children to a friend and asked, "[D]o they look like they have any Jeffries in them to you?" When his friend stated that he did not know, the decedent replied, "I don't know about that thing either." (R. 109) On another occasion the decedent was asked whether or not he thought the petitioner was his daughter. He replied: "A woman can swear that she is the mother, but a man does not know." (R. 112)

North Carolina statutes allow four ways in which an illegitimate child may inherit from her father if he dies intestate. All four ways must be accomplished during the father's lifetime. Paternity may be established in the following ways: (1) a criminal nonsupport action (N.C.G.S. 29-19(b)(1), N.C.G.S. 49-7); (2) a civil nonsupport action (N.C.G.S. 29-19(b)(1), N.C.G.S. 49-14); (3) an action seeking legitimation (NC.G.S. 29-19(b)(1), N.C.G.S. 49-10); and (4) the filing of a written instrument during both the father's and child's lifetime which acknowledges paternity [N.C.G.S. 29-19(b)(2)].

As noted, the fourth method is found in N.C.G.S. 29-19 (b)(2), which states in full:

> Any person who has acknowledged himself during his own lifetime and the child's lifetime to be the father of such child in a written instrument executed or acknowledged before a certifying officer named in G.S.

> 52-10(b) and filed during his own lifetime and the child's lifetime in the office of the clerk of superior court of the county where either the father or child resides [will legitimate said child for purposes of intestate succession].

The "certifying officer" who must oversee the signing of the document need only be a notary public [N.C.G.S. 52-10(b)]. Thus an illegitimate may inherit pursuant to the North Carolina statute if her father signs an admission in front of a notary public and the document is then filed in the county courthouse.

The petitioner evidently knew of this statutory provision and requested such a document from Kryl Jeffries, the decedent. Jeffries told a friend that the petitioner had come by his home a few weeks before his death and had wanted him to take out some papers acknowledging her as his legal daughter. Jeffries reported that he told her "Not only NO, BUT HELL NO." (R. 109) On the day he died in October, 1984, Jeffries also told his niece that the petitioner had been to his home two weeks earlier and had told him that she was going to go to the Alamance County courthouse to get some papers signed to make her his legitimate heir. Jeffries reported that he told the petitioner that "If anyone does sign to make you my legal heir I will sue the whole county." (R. 106)

As the decedent approached the end of his life, there were four people he wished to provide for after his death: the petitioner and three siblings. He acted to bestow $10,796.02 to the petitioner, by purchasing savings bonds in both his and her name ($6,750.00) (R. 54) and by naming her as beneficiary in an insurance policy ($4,046.02). (R. 72) He acted to bestow $13,251.50 to each of his three

siblings by relying on the North Carolina intestate succession statute to distribute his estate according to law. (Total value of estate—$46,504.50 (R. 25)—minus value of bonds in petitioner's name—($6,750.00) (R. 54)—divided by three). $17,910.00 of the estate came from the value of the decedent's home, which he had purchased with money from the sale of his and his siblings' mother's home. (R. 115-16)

On several occasions Kryl Jeffries, the decedent, was asked to make a will. He refused, replying: "The judicial system in North Carolina will do the same thing I would do, therefore I do not need a will. The only things that Zelma E. Hayes [the petitioner] will get under North Carolina law are the things with her name on them. My heirs will be Myrtle, Novella, and Samuel [his siblings]." (R. 106) The decedent also stated that for him "A will is a waste of money. I know what the North Carolina laws say and the law will do just what I want done anyway." (R. 108)

Following Kryl Jeffries' death, the petitioner received the $10,796.02 which the decedent had provided for her. She then instituted this action to claim his entire remaining estate, including the $17,910.00 value of the decedent's home.

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REASONS WHY THE PETITION SHOULD BE DENIED

I. THE DOCTRINE OF STARE DECISIS MUST BE RESPECTED. LALLI v. LALLI, 439 U.S. 259 (1979), MUST NOT BE OVERRULED AFTER ONLY NINE YEARS WHEN ITS HOLDING HAS NOT BEEN QUESTIONED BY ANY SUBSEQUENT DECISION OF THIS COURT AND THERE IS NO NEWLY DISCOVERED FACTUAL EVIDENCE SUGGESTING THAT LALLI IS IN ERROR.

Respect for the doctrine of *stare decisis* is critical to the maintenance of the integrity of this Court:

> [*Stare decisis*] permits society to presume that bedrock principles are founded in the law rather than in the proclivities of individuals, and thereby contributes to the integrity of our constitutional system of government, both in appearance and in fact. While *stare decisis* is not an inexorable command, the careful observer will discern that any detours from the straight path of *stare decisis* in our past have occurred for articulable reasons, and only when the Court has felt obliged "to bring its opinions into agreement with experience and with facts newly ascertained."

Vasquez v. Hillery, 474 U.S. 254, 257 (1986) (citation omitted). This Court has been unequivocal in demanding that "any departure from the doctrine of *stare decisis* demands special justification." *Arizona v. Rumsey*, 467 U.S. 203, 212 (1984). There are no "special justification[s]" demanding the overruling of *Lalli v. Lalli*, 439 U.S. 259 (1979), as sought by the petitioner.

Recent decisions of this Court which have overruled precedent have done so on the basis that an articulated

test had proven "unworkable" in subsequent cases, *Garcia v. San Antonio Metropolitan Transit Authority,* 469 U.S. 528, 531 (1985), or that a previous decision was based on factual assumptions which had been found to be erroneous. *Solario v. United States,* 55 U.S.L.W. 5038, 5040 (June 23, 1987). Neither situation applies in this case.

There have been five cases before this Court directly concerning the treatment of illegitimates since *Lalli: Reed v. Campbell,* — U.S. —, 106 S.Ct. 2234 (1986); *Pickett v. Brown,* 462 U.S. 1 (1983); *Mills v. Habluetzel,* 456 U.S. 91 (1982); *United States v. Clark,* 445 U.S. 23 (1980); and *Parham v. Hughes,* 441 U.S. 347 (1979). In none of these cases has the Court suggested that *Lalli* is not good law. In fact, in the most recent case, *Reed v. Campbell,* Justice Stevens, a dissenter in *Lalli,* wrote for a *unanimous* Court. He cited *Lalli* for the proposition that the Court had "upheld statutory provisions that have an evident and substantial relation to the State's interest in providing for the orderly and just distribution of a decedent's property at death." *Reed v. Campbell,* — U.S. —, 106 S.Ct. 2234, 2237 (1986). Although Justice Stevens noted in a footnote that the dissenters in *Lalli* disagreed with the Court's application of the legal standard in *Lalli,* there was no suggestion that there exists any justification for refusing to honor *stare decisis* in this case. *Id.* at fn.7.

Petitioner likewise fails to provide any facts for the Court's consideration that were not known to it at the time it decided *Lalli.* Petitioner's entire case rests on the fact that she contends that she can *now* demonstrate that she is an heir to the decedent. Justice Stewart addressed precisely this argument in *Parham v. Hughes*: "Since

we have concluded that the classification created by the Georgia statute is a rational means for dealing with the problem of proving paternity, it is *constitutionally irrelevant* that the appellant may be able to prove paternity in another manner." 441 U.S. 347, 358 (1979) (plurality opinion; emphasis added).

Cases are not overruled because they are controversial nor because there are those who disagree with the decision. The *Lalli* Court knew the case was difficult at the time it was decided. The Court noted that there would inevitably be some children who would be able to establish a relationship to their deceased fathers without seriously disrupting the administration of the estate and that to these children the New York statute would "appear[] to operate unfairly". *Lalli*, 439 U.S. at 272-73. The Court nonetheless held that the statute overall was substantially related to important state interests and would not be invalidated because of the possibility of unfairness in a few cases. *Id.* at 275-76.

This Court has squarely addressed the issue of whether or not a case should be overruled merely because an earlier Court had to draw a difficult line. In *City of Akron v. Akron Center for Reproductive Health, Inc.*, the Court responded to a request similar to petitioner's:

> [A]rguments continue to be made, in these cases as well, that we erred in interpreting the Constitution. Nonetheless, the doctrine of *stare decisis*, while perhaps never entirely pursuasive on a constitutional question, is a doctrine that demands respect in a society governed by the rule of law.

462 U.S. 416, 419-20 (1983). Petitioner can offer no principled reason why *Lalli v. Lalli* should be overruled. This

Court dismissed a similar case seeking to overrule *Lalli* in 1980. *White v. Randolph,* 59 Ohio St. 2d 6, 391 N.E.2d 333 (1979), *appeal dismissed sub nom Jackson v. White,* 444 U.S. 1061 (1980). This Court's continuing respect for *stare decisis* demands that this petition likewise be dismissed.

II. NORTH CAROLINA'S INTESTATE SUCCESSION STATUTE WAS REFORMED IN 1974, IS CONSISTENT WITH THE TREND OF MODERN AUTHORITY, AND IS MORE GENEROUS TO ILLEGITIMATES THAN THE NEW YORK STATUTE UPHELD IN LALLI v. LALLI.

The North Carolina intestate succession act is in fact far more generous to illegitimates than the New York statute upheld in *Lalli v. Lalli,* 439 U.S. 259 (1979). Where the New York statute provided only one means for an illegitimate to inherit, a judicial filiation proceeding, *Lalli,* 439 U.S. at 261-262, the North Carolina statute provides *four* ways for an illegitimate to inherit, including merely filing a notarized admission of paternity in the county courthouse. *See* discussion of N.C.G.S. 29-19 at pages 5-6 *supra.*

The present North Carolina intestate succession statute was passed in 1974 and 1977 and is a marked liberalization from the former statute, passed in 1959, which allowed illegitimates to inherit only from their mothers and each other. *See* 1959 N.C.Sess.Laws, ch. 879, p.891, s.29-19. One commentator noted that the present North Carolina statute "reflects the trend of modern authority" and "indicates the General Assembly's awareness that it is indeed ineffective and illogical to visit 'society's condemnation

of irresponsible liaisons beyond the bounds of marriage' on innocent children." *Note, Judicial Impairment of the Illegitimate's Paternal Inheritance Rights in North Caroline—Mitchell v. Freuler,* 16 Wake Forest L. Rev. 205, 212 (1980).

The North Carolina courts are likewise not acting to punish illegitimates. The North Carolina Supreme Court upheld the challenged intestate succession statute in an opinion which carefully compared the North Carolina statute to the statute upheld in *Lalli. Mitchell v. Freuler,* 297 N.C. 206, 254 S.E.2d 762 (1979). There is further evidence of the fact that North Carolina courts understand and apply *Lalli* correctly; the North Carolina Court of Appeals used *Lalli* to strike down a three year statute of limitations on the North Carolina legitimation statute two years before this Court's opinion in *Mills v. Hablutzel. County of Lenoir ex rel. Cogdell v. Johnson,* 46 N.C.App. 182, 264 S.E.2d 816 (1980).

At heart, petitioner's claim lies in the fact that when the legislature reformed the intestate succession statute it did not go far enough to please the petitioner. While the petitioner is free to lobby the legislature, there is simply nothing unconstitutional about the present statute.

The body of the North Carolina intestate succession statute has been in existence in its current form since 1974. People have made their estate planning decisions in reliance on the statute. One such person was the decedent, Kryl Jeffries. It is clear that Kryl Jeffries relied on the fact that the statute would pass his property to his siblings when making the decision not to pay a lawyer to draft a will. He provided a fair amount to the petitioner,

given his own uncertainty regarding her birth, and left nearly equal amounts to his siblings via the operation of the intestate succession statute.

There has been no injustice done in this case. There is evidence that both the petitioner, who was fifty-two at the time of the decedent's death, and the decedent understood the operation of the intestate succession statute. The petitioner's attempt to gain all of Kryl Jeffries' property after his death goes against the decedent's own expressed reliance on the intestate succession statute and should not be allowed.

CONCLUSION

For the reasons set forth herein, respondents respectfully request that the petition for a writ of certiorari be denied.

Respectfully submitted,

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